IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.303 OF 2006

Rajesh P. Sharma ...Petitioner
vs.
State Bank of India and others ...Respondents

Mr.A.B.Vagyani for the Petitioner
Ms S.V.Gajare,A.P.P. for State
Mr.N.R.Tiwari i/b M/s.V.B.Tiwari & Co. for Respondent No.1

CORAM: A.S.OKA,J.
DATE : OCTOBER 7,2006.

ORAL JUDGMENT:

1. Earlier order passed in this Petition on 20th February 2006 discloses that the petition will be heard finally at admission stage. On last two dates the submissions of the Advocate for the Petitioner were heard. As none appeared for the first Respondent, the Advocate for the Petitioner was directed to issue a fresh notice to the first Respondent. Today, I have heard the learned Advocate for first Respondent.

2. The first Respondent is the complainant in a private complaint filed under section 138 read with section 141 of the Negotiable Instruments Act, 1881. In the said complaint, the Petitioner has been arraigned as an accused. An Affidavit of evidence was filed on behalf of the first Respondent of one Shri S.P.Deshpande, a Manager of the first Respondent. Initially, the said Affidavit was not verified. The Trial court found that the said Affidavit was subsequently verified without permission and knowledge of the Court. When this was noticed by the Court, impugned order dated 4th January 2006 was passed holding that the Judgment cannot be pronounced on the basis of evidence led on the basis of the said tampered

Affidavit and therefore, there should be a de-novo trial. By the said order, the Trial court directed that a show cause notice should be issued to Shri S.P.Deshpande calling upon him to show cause why prosecution for tampering with the Affidavit should not be launched against him.

3. The learned Advocate for the Petitioner submitted that on the basis of the Affidavit of evidence, the said witness has been extensively cross examined. He submitted that there are important admissions given by the witness which will be wiped out by ordering a fresh trial. He submitted that the first Respondent cannot be allowed to take advantage of its own wrong. The learned Counsel for the first Respondent submitted that the order passed by the Trial Court is legal and proper.

4. I have considered the submissions. The Trial Judge found that initially when the Affidavit of evidence was filed by Shri S.P.Deshpande, it was not verified. It was found that as a matter of fact, the verification was done subsequently by Shri S.P.Deshpande without permission of the Trial Court. That is the reason why a finding has been recorded by the learned Trial Judge that there is a tampering at the instance of the first Respondent of the Affidavit of evidence.

5. The witness was already extensively cross examined by the Advocate for the Petitioner. Only because there was a tampering on the part of the witness of the first Respondent by verifying the Affidavit subsequently, the learned Trial Judge could not have ordered retrial thereby giving unfair

advantage to the first Respondent as the cross examination of the witness which was already made will be nullified. This was not a case where tampering is done in the main body of the Affidavit of evidence. The verification clause below the Affidavit was added without permission of the Court.

6. By a separate order the learned Trial Judge has accepted the apology tendered by Shri S.P.Deshpande. In the circumstances, the order passed by the trial Court for de novo trial deserves to be quashed and set aside and the complaint will have to be decided on the basis of evidence which is already recorded. The Petitioner had to approach this Court as a result of the impugned order. The impugned order was passed as a result of lapse on the part of of the first Respondent. Therefore, the first Respondent will have to pay costs of the Petition to the Petitioner quantified at Rs.5000/-.

7. Hence I pass the following order :

i) Impugned Judgment and Order dated 4th January 2006 is quashed and set aside.

ii) The trial Court will decide the complaint on the basis of evidence which is already on record.

iii) The first Respondent is directed to pay costs of Rs.5,000/- to the Petitioner within a period of ten weeks from today.

JUDGE